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11 **UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA**

13 JOHN BARKER,
14 Plaintiff,

15 vs.

16 XEROX EDUCATION SERVICES,
17 LLC dba ACS EDUCATION
18 SERVICES; and ACCESSLEX
19 INSTITUTE dba ACCESS GROUP,

20 Defendant(s).

21 Case No.: 2:17-cv-3652

22 **COMPLAINT AND DEMAND FOR**
23 **JURY TRIAL FOR:**

- 24 **1. VIOLATIONS OF THE**
25 **ROSENTHAL FAIR DEBT**
26 **COLLECTION PRACTICES**
27 **ACT [CAL. CIV. CODE § 1788]**
- 28 **2. VIOLATIONS OF THE**
29 **TELEPHONE CONSUMER**
30 **PROTECTION ACT [47 U.S.C. §**
31 **227]**

32 **INTRODUCTION**

33 1. JOHN BARKER (Plaintiff) bring this action to secure redress from
34 XEROX EDUCATION SERVICES, LLC dba ACS EDUCATION SERVICES
35 (Defendant Xerox or Xerox) and ACCESSLEX INSTITUTE dba ACCESS
36 GROUP (Defendant Access or Access), collectively referred to as "Defendants"

1 for violations of the Rosenthal Fair Debt Collection Practices Act [CAL. CIV.
2 CODE § 1788] and for violations of the Telephone Consumer Protection Act [47
3 U.S.C. § 227].

4 **JURISDICTION AND VENUE**

5 2. Jurisdiction in this Court is proper pursuant to 28 U.S.C. § 1331 as
6 Plaintiff's claims arise under the laws of the United States.

7 3. Venue is proper in this District pursuant to 28 U.S.C. § 1331(b)
8 because the acts and transactions alleged in this Complaint occurred here, Plaintiff
9 resides here, and Defendant transacts business here.

10 **PARTIES**

11 4. Plaintiff is an individual residing in Los Angeles County, California.
12 Plaintiff is a natural person from whom a debt collector seeks to collect a consumer
13 debt which is due and owing or alleged to be due and owing from such person.

14 5. Defendant Xerox, is a student loan servicing entity engaged in the
15 business of collecting debt in this state and in several other states, with its principal
16 place of business located in California. The principal purpose of Defendant Xerox
17 is the collection of debts in this state and several other states, and Defendant
18 regularly attempts to collect debts alleged to be due another. Defendant Access, is
19 a law school student loan lending entity engaged in the business of lending,
20 servicing and collecting debt in this state and in several other states, with its
21 principal place of business located in Pennsylvania. The principal purpose of
22 Defendant Access is the collection of debts in this state and several other states,
23 and Defendant regularly attempts to collect debts alleged to be due another.

24 **FACTUAL ALLEGATIONS**

25 6. Within one year prior to the filing of this action, Defendants
26 individually and collectively contacted Plaintiff to collect money, property or their
27 equivalent, due or owing or alleged to be due or owing from a natural person by
28

1 reason of a consumer credit transaction and/or "consumer debt" with respect to
2 Plaintiff's student loan account.

3 7. The alleged debt at issue is a private law school "Bar Study" loan
4 taken out by Plaintiff over ten (10) years ago through Defendant Access. At some
5 time in 2012, Defendant Access entered into a business relationship with Defendant
6 Xerox wherein Defendant Xerox would service Defendant Access' active student
7 loan accounts, including but not limited to: preparing and delivering written
8 correspondence including payment requests, receiving and processing payments,
9 and placing telephone calls, collection or otherwise, to student borrowers.

10 8. At some point in 2016, Plaintiff fell behind on his monthly payments
11 regarding his student loan with Defendant Access. As a result, Defendant Xerox –
12 at Defendant Access' direction - began to constantly and continuously call Plaintiff
13 on his cellular telephone number ending in 5646 with the intent to harass Plaintiff
14 into paying alleged debt.

15 9. Defendants both communicated with Plaintiff with such frequency as
16 to be unreasonable under the circumstances and to constitute harassment, including
17 multiple telephone calls in one day.

18 10. The natural and probable consequences of Defendants' conduct was
19 to harass, oppress or abuse Plaintiff in connection with the collection of the alleged
20 debt.

21 11. On or about October 21, 2016, Plaintiff answered one of Defendants'
22 calls and advised an agent that Defendants were to cease placing any further calls
23 to Plaintiff and his cellular telephone. Despite these clear instructions, Defendants
24 continued to place its autodialed collection calls to Plaintiff's cellular telephone
25 into 2017.

26 12. Upon information and belief, Plaintiff alleges that Defendants placed
27 approximately fifteen (15) automated collection calls to Plaintiff's cellular
28

1 telephone after Plaintiff had revoked consent to receive such calls on his cellular
2 telephone.

3 13. Defendants and/or its agent(s) used an “automatic telephone dialing
4 system”, as defined by 47 U.S.C. § 227(a)(1) to place these aforementioned
5 collection calls to Plaintiff. The dead air that the Plaintiff experienced on the calls
6 that he received (i.e., when Plaintiff answered there was several seconds where no
7 other person was on the other end) is indicative of the use of an automatic telephone
8 dialing system.

9 14. This “dead air” is commonplace with autodialing and/or predictive
10 dialing equipment. It indicates and evidences that the algorithm(s) being used by
11 Defendants’ and/or its agent’s autodialing equipment to predict when the live
12 human agents are available for the next call has not been perfected and/or has not
13 been recently refreshed or updated. Thus resulting in the autodialer placing a call
14 several seconds prior to the human agent’s ability to end the current call he or she
15 is on and be ready to accept the new connected call that the autodialer placed,
16 without human intervention, to Plaintiff.

17 15. The dead air is essentially the autodialer holding the call it placed to
18 Plaintiff until the next available human agent is ready to accept it. Should the call
19 at issue been manually dialed by a live human being, there would be no such dead
20 air as the person dialing Plaintiff’s cellular telephone would have been on the other
21 end of the call the entire time and Plaintiff would have been immediately greeted
22 by said person.

23 16. Defendants’ calls constituted calls that were not for emergency
24 purposes as defined by 47 U.S.C. § 227(b)(1)(A).

25 17. Defendants’ calls were placed to a telephone number assigned to a

1 cellular telephone service for which Plaintiff incurs a charge for incoming calls
 2 pursuant to 47 U.S.C. § 227(b)(1).

3 18. As of October 21, 2016, when Plaintiff first demanded that Defendants
 4 cease placing its calls to his cellular telephone, any such consent for Defendants to
 5 place its autodialed calls (assuming it existed in the first place), was revoked by
 6 Plaintiff. Accordingly, Defendants did not have Plaintiff's "prior express consent"
 7 to receive calls using an automatic telephone dialing system on his cellular
 8 telephone pursuant to 47 U.S.C. § 227(b)(1)(A).

9 19. As a result of Defendants' alleged violations of law by placing these
 10 automated calls to Plaintiff's cellular telephone without prior express consent,
 11 Defendants caused Plaintiff harm and/or injury such that Article III standing is
 12 satisfied in at least the following, if not more, ways:

- 13 a. Invading Plaintiff's privacy;
- 14 b. Electronically intruding upon Plaintiff's seclusion;
- 15 c. Intrusion into Plaintiff's use and enjoyment of his cellular
 16 telephone;
- 17 d. Impermissibly occupying minutes, data, availability to answer
 18 another call, and various other intangible rights that Plaintiff has as to
 19 complete ownership and use of his cellular telephone;
- 20 e. Causing Plaintiff to expend needless time in receiving, answering,
 21 and attempting to dispose of Defendant's unwanted calls.

22 **FIRST CAUSE OF ACTION**

23 **(Violation of the RFDCPA, CAL. CIV. CODE § 1788 – Against Both
 24 Defendants Jointly and Severally)**

25 20. Plaintiff incorporates by reference all of the above paragraphs of this
 26 Complaint as though fully stated herein.

21. Defendants violated the RFDCPA. Defendants' violations include, but are not limited to, the following:

(a) Defendants violated CAL. CIV. CODE § 1788.11(d) by causing a telephone to ring repeatedly or continuously to annoy the person called; and

(b) Defendants violated CAL. CIV. CODE § 1788.11(e) by communicating, by telephone or in person, with the debtor with such frequency as to be unreasonable and to constitute an harassment to the debtor under the circumstances;

(c) Defendants violated CAL. CIV. CODE § 1788.17 by collecting or attempting to collect a consumer debt without complying with the provisions of Sections 1692b to 1692j, inclusive, of . . . Title 15 of the United States Code (Fair Debt Collection Practices Act).

22. Defendants' acts, as described above, were done intentionally with the purpose of coercing Plaintiff to pay the alleged debt.

23. As a result of the foregoing violations of the RFDCPA, Defendants are each liable to Plaintiff for actual damages, statutory damages, and attorney's fees and costs.

SECOND CAUSE OF ACTION

(Violations of the TCPA, 47 U.S.C. § 227 – Against Both Defendants Jointly and Severally)

24. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

25. Defendants violated the TCPA. Defendants' violations include, but are not limited to the following:

(a) Within four years prior to the filing of this action, on multiple occasions, Defendants violated TCPA 47 U.S.C. § 227 (b)(1)(A)(iii) which states in pertinent part, “It shall be unlawful for any person within the United States . . . to make any call (other than a call made for emergency purposes or made with the prior express consent of the called party) using any automatic telephone dialing

1 system or an artificial or prerecorded voice — to any telephone number assigned
 2 to a . . . cellular telephone service . . . or any service for which the called party is
 3 charged for the call.

4 (b) Within four years prior to the filing of this action, on multiple
 5 occasions, Defendants willfully and/or knowingly contacted Plaintiff at Plaintiff's
 6 cellular telephone using an artificial prerecorded voice or an automatic telephone
 7 dialing system and as such, Defendants knowing and/or willfully violated the
 8 TCPA.

9 26. As a result of Defendants' violations of 47 U.S.C. § 227, Plaintiff is
 10 entitled to an award of five hundred dollars (\$500.00) in statutory damages, for
 11 each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B). If the Court finds
 12 that Defendants knowingly and/or willfully violated the TCPA, Plaintiff is entitled
 13 to an award of one thousand five hundred dollars (\$1,500.00), for each and every
 14 violation pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

15 27. Plaintiff is also entitled to seek injunctive relief prohibiting such
 16 conduct in the future.

17 **VII. PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiff respectfully requests that judgment be entered
 19 against both Defendant Xerox and Defendant Access for the following:

20 (a) An injunction prohibiting Defendants from contacting Plaintiff on
 21 Plaintiff's cellular telephone using an automated dialing system
 22 pursuant to 47 U.S.C. § 227(b)(3)(A); and
 23 (b) Actual damages pursuant to CAL. CIV. CODE § 1788.30(a); and
 24 (c) As a result of Defendants' violations of 47 U.S.C. § 227(b)(1),
 25 Plaintiff is entitled to and requests five hundred dollars (\$500.00) in
 26 statutory damages, for each and every violation, pursuant to 47
 27 U.S.C. § 227(b)(3)(B); and

1 (d) As a result of Defendants' willful and/or knowing violations of 47
2 U.S.C. § 227(b)(1), Plaintiff is entitled to and requests treble
3 damages, as provided by statute, up to one thousand five hundred
4 dollars (\$1,500.00), for each and every violation pursuant to 47
5 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C); and
6 (e) Statutory damages pursuant to CAL. CIV. CODE § 1788.30(b); and
7 (f) Costs and reasonable attorney's fees pursuant to CAL. CIV. CODE §
8 1788.30(c); and
9 (g) Awarding Plaintiff any pre-judgment and post-judgment interest as
10 may be allowed under the law; and
11 (h) For such other and further relief as the Court may deem just and
12 proper.

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14 **DEMAND FOR JURY TRIAL**

15 Please take notice that Plaintiff demands a trial by jury in this action.

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20 Dated: May 15, 2017

RESPECTFULLY SUBMITTED,
MARTIN & BONTRAGER, APC

21
22 By: /s/ Nicholas J. Bontrager
23 Nicholas J. Bontrager
24 *Attorney for Plaintiff*